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REGULATION OF AIR COACH SERVICE STANDARDS

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DENIAL by the Civil Aeronautics Board on January 6, 1953 of United Air Lines' petition for authority to reduce the number of seats in DC-4 coach planes from 64 to 58 has raised two fundamental questions. First, there is the question of *safety standards* in connection with "high density" air coach operations. Second, there is the question of *economic policy* in air coach service and to what extent the Civil Aeronautics Board should interfere with the judgment of private airline management in fixing specific air coach rates and quality standards.

In view of the rapid growth of air coach traffic not only in domestic service but on the international routes, it is deemed desirable to give consideration to the questions of safety and economic policy which have been raised during the current United Air Lines-Civil Aeronautics Board controversy.

History of the UAL-CAB Coach Seat Controversy

On December 6, 1951, the Board issued a statement of "Coach Policy for the Certificated Domestic Carriers" urging expansion of air coach services at fares approximating 4 cents per passenger mile. Two types of coach service were advocated: (1) Fast, "high-density equipment" without scheduling restrictions at fares less than 4½ cents per passenger mile; (2) Off-peak air coach service, not limited as to equipment—fares not to exceed 4 cents per passenger mile.

The policy statement set specific minimums for high-density coach planes, as follows: DC-4 64 seats, DC-6 68 seats, and Constellation 79 seats. The Board further stated that it would establish minimum seating density for other aircraft types in connection with specific carrier proposals and said:

"It should be noted that the above minimum seating densities represent the minimum from air economic standpoint, while the maximum will be predicated on safety considerations."

On November 24, 1952 United Air Lines advised the civil air agencies that it was voluntarily reducing the number of passengers carried in DC-4 coach planes from 64 to 54 on the grounds that five-abreast seating, narrow aisles, and inadequate emergency exits subjected passengers to serious safety hazards. In a statement to the press W. A. Patterson, president of the company said: "Research has indicated that in the event of a landing or take-off accident, high-density loading might cause undue congestion and thereby create a safety hazard."

It was indicated that United had reached this conclusion from reports based on a series of tests conducted jointly by United and the Cornell Foundation, the Air Force, and the National Advisory Committee for Aeronautics.

On December 24, 1952 United petitioned the Board requesting it to reconsider its "Coach Policy" to "permit the operation of coach services at presently published coach fares with DC-4 type aircraft having a minimum density of 58 passenger seats" (four abreast seating with wider aisle).

On January 6, 1953 the Board issued an order denying United's petition stating that "the practice of selling only 54 seats on coach flights is contrary to United's tariff, violates Section 403 (b) of the Act, and should therefore be discontinued immediately."

The Board further stated:

"Under the Board's decisions and policy, the seating density standards of coaches are related to the service offered. By regularly selling 10 seats less than the number specified in its tariff on coach flights, United is able to offer coach service superior to that offered by other carriers who observe their own tariffs. The competitive advantage secured by this practice may constitute an unfair method of competition in violation of Section 411 of the Act. . . .

"The Board's policy with respect to seating density on coaches was established for the purpose of promoting adequate and economical air service—to make mass air transportation at low cost an effective reality. The achievement of this goal depended on providing service at lowest cost reasonably attainable by the industry as a whole; and the requisite low cost service could be assured only by setting minimum density standards for the industry at levels that would result in low unit cost consistent with comfort and safety.

"The lowered seating density involved in United's proposals would undoubtedly raise the unit cost of and diminish the revenue from coach services making such service less economic, thus cutting off numerous cities and many passengers from the possibilities of low cost air transportation. . . .

"The competitive impact of permitting United to offer reduced seating on its coaches would probably force other carriers to follow suit and render similar service. This in turn would tend to make coach service uneconomic and impossible on many routes of other carriers or require higher coach fares. Such a general result might well hinder, delay, and even make impossible the expansion of low cost air transportation, a development which the public interest demands and which it is the Board's duty to promote.

"On the basis of all available information, including the data presented by United, a seating density of 64 persons on DC-4 aircraft provides an adequate margin of safety and comfort. . . ."

W. A. Patterson, president of United Air Lines, replied to the Board's denial in full-page advertisements, carried during the following week in metropolitan newspapers, which included the following statements:

"While the additional passengers did not tax the lift capacity of the plane, our safety engineers raised the question as to whether

or not our patrons in the coach airplane were provided adequate protection for emergency evacuation.

"We therefore conducted extensive tests which convinced us that we were not fulfilling our obligation to the public. To check our own findings we sought the counsel of outside independent agencies, including the National Fire Protection Association and the Flight Safety Foundation. Our previous conclusions were confirmed.

"As a result, we immediately reduced the DC-4 maximum load from 66 passengers to 54 and ordered the removal of the center seats to provide wider aisles. . . .

"We presented our findings to the CAB, although we were not, we assure you, attempting to impose our views on any other airline or any government agency.

"To comply with the law, we then sought approval from the CAB to continue our service with fewer seats, at the same fare. It was our business judgment that our revenue from the operation would be less than previously, but there would be a profit.

"The CAB disagreed with us on both the points of safety and economics—stating that the safety factors of the higher density seating are adequate, and that United's plan is economically unsound."

The Question of Air Coach Safety Standards

The joint responsibility for safe operations resting upon the airlines themselves and upon the Civil Aeronautics Board is clearly stated in Section 601 (b) of the Act, as follows:

"In prescribing standards, rules and regulations . . . the Board shall give full consideration to *the duty resting upon air carriers* to perform their services with the highest possible degree of safety in the public interest. . . . (Italics supplied.)

"The Board shall exercise and perform its powers and duties under this Act in such a manner as will best tend to reduce or eliminate the possibility of, or recurrence of, accidents in air transportation. . . ."

There are clearly two distinct requirements in aviation safety: (1) accidents must be prevented by every possible means, and (2) the chances of survival by means of prompt evacuation and rescue in the event of accident must be protected.

As pointed out by United in its petition to the Board, "*accidents where survival is possible constitute the major portion of air transport accidents.*" This is indicated by the fact that in 235 major accidents since January 1948, in domestic and international service, 114 passengers were killed and 208 injured, although 1,367 passengers were actually involved in the accidents. Prompt evacuation and rescue operations become especially urgent in the event of accidents involving fire—and it is significant to note in this connection that 36 percent of the major accidents since 1948 were accompanied by fire immediately afterward. High-density seating and narrow aisles tend to increase the possibility of panic and congestion and to reduce the opportunity for prompt evacuation and rescue.

Jerome Lederer of the Flight Safety Foundation has expressed the view that "high-density aircraft (tourist class) are going to provide a problem. . . . When you crowd 85 or so passengers into a plane that normally accommodates say 60 persons, I am afraid that there is going to be some very sad experience if fire follows a crash." (Quoted in United Airlines' petition.)

George H. Tryon III, of the National Fire Protection Association, has written as follows to United Air Lines' Assistant Director of Safety: (Quoted in the UAL petition.)

"Our Association is greatly concerned over the present trend toward high-density occupancy of existing aircraft from the point of view of safety following impact accidents involving fire. . . .

"... it is our opinion that the increased occupancy authorizations permitted under Special Civil Air Regulation SR-387 (effective October 27, 1952) are a threat to public safety which should be energetically opposed by all concerned with safeguarding the lives of those who use the commercial airlines as an instrument of public transportation.

"Fortunately, we have not had a serious crash fire accident involving aircraft with high-density seating at an airport up to this date, but if 7 of the 28 occupants of the National Airlines aircraft which crashed in Philadelphia could not escape unassisted, it is frightening to contemplate what the toll might have been if the aircraft had been carrying a full load of 86 as authorized for the DC-4 under SR-387."

It is clear from the above that the question of adequate safety standards for air coach service is one which involves the joint responsibility of the Federal civil aviation agencies and of private airline managements. Having studied the matter and reached the conclusion that its DC-4 air coach planes with 66 seats were unduly hazardous in the event of accidents involving impact-fires, it seems logical to conclude that United Air Lines was properly performing its duty under Section 601 (b) of the Act when it took steps to reduce the seating capacity of its DC-4 planes to 54. For United to have continued high-density operations under the circumstances would have represented dereliction of its duty as defined by Section 601 (b) of the Act.

This is not to imply that all so-called "high density" air coach equipment is necessarily hazardous. Provision of additional emergency exits and special training of crews are factors which may to some extent offset the 3 against 2 high-density seating arrangement. But as pointed out in the foregoing, the safety question deserves careful scrutiny if high-density air coach service is to continue its rapid expansion. Intensive research on emergency evacuation and rescue techniques at this time may make it possible to avoid learning lessons by disastrous experience.

The Question of Economic Policy for Air Coach Service

The second question raised by the UAL-CAB air coach controversy involves the determination of economic standards for air coach service.

The Board contends that United's reduced seating density would "diminish the revenue from coach services . . . and would tend to make coach service uneconomic and impossible on many routes of other carriers or require higher coach fares." In short, the Board, having apparently set a target rate of 4 cents per passenger mile for domestic air coach service, believes it necessary to exercise control over the specific conduct of the service in order to make its price policy effective.

The economic policy problem involved in the coach controversy became quite apparent January 22, 1953, when Eastern Air Lines asked the Board to correct what it termed an *unfair competitive advantage* in air coach service granted operators of Douglas aircraft over those flying Lockheed Constellations. Eastern's petition opposed United's application for 54-seat air coach service in DC-4 equipment stating that "actually United's proposal is solely and simply to increase the attractiveness of its coach service by allotting more room to each passenger."

By declaring a specific economic policy for air coach service, the Civil Aeronautics Board has placed itself in the difficult position of assuming two basic managerial functions—specifically, pricing and determination of service standards—which in most American business enterprises are considered to be the prerogatives of private management. There is, of course, no question that the Board has been given broad powers for economic regulation of the air carriers under Title IV of the Act. Economic regulation includes control over the right to enter the air transport industry by the granting or denying of certificates of public convenience and necessity or permits to engage in interstate, overseas, or foreign air transportation. In the second instance the Board is given the power to prescribe or approve rates and practices of air carriers and to fix the rate of compensation for the transportation of mail in aircraft. The Board's power to regulate airline rates follows the general precedent established under the Interstate Commerce Act, namely power to establish maximum rates, minimum rates, and to prescribe the actual rates for any type of common carrier airplane transportation. Obviously under these powers the Board can prescribe air coach rates or refuse to approve any rates with which it does not agree. Economic regulation by the Civil Aeronautics Board also includes authority to prevent unjust discrimination, preference, and prejudice, and to prevent unfair or deceptive competitive practices in air transportation.

Air transportation is therefore subject to economic regulation that goes far beyond the controls exercised by the Government over ordinary business enterprises. Air transportation is subject to these controls on the general public utility theory that business "affected with a public interest" shall be subject to special public regulation. But while the Civil Aeronautics Board possesses comprehensive power much in the same manner as the Interstate Commerce Commission possesses comprehensive power to regulate interstate surface carriers, it does

not follow that the Board needs to exercise all of the powers it possesses. In short, the power to regulate air transportation does not imply a mandate from the Congress to take over the management of the air carrier industry. Yet, there are indications that in developing its current "Coach Policy" the Board is actually assuming several of the primary prerogatives of private management in common carrier air transportation.

In his book, *Government Control of Business* (1941), Harold D. Koontz calls attention to the difficulties of price control by the Government as follows:

"The difficulties of price control have led to additional regulations. . . . Indeed, once the government undertakes to regulate prices, the way is open, through the sheer necessity of making price regulation effective, to bring under control many practices of management and labor." (p. 899)

Development of the Board's Air Coach Policy

The history of the Air Coach Policy of the Civil Aeronautics Board through the year 1950 was outlined in an article entitled "The 'Air Coach' Experiment and National Air Transport Policy" by Harold A. Jones and Frederick Davis, published in the Journal in two parts.¹ Jones and Davis attributed some influence to the non-scheduled airlines to inaugurate a second class of low-cost air coach service shortly after World War II. Capital Air Lines apparently was the first of the major trunk lines to file a tariff proposing the inauguration of coach-type service between New York and Chicago via Pittsburgh. Capital proposed to sell the service at a fare of 4 cents per mile as compared with the standard fare of 6 cents. To justify the difference in rate, the flights were to be operated with 60-passenger DC-4 aircraft (which Jones and Davis termed a "high-density" seating arrangement) with midnight departure from each terminal and cutting out such frills as free meals and extra stewardesses. The Board gave temporary approval and service was begun November 4, 1948. TWA followed and received the Board's "blessing" on DC-3 night air coach service having 24 seats instead of the usual 21 and operating over a local route with several intermediate stops.

Meanwhile various other coach tariff proposals were filed by other airlines and the Board issued a policy statement September 7, 1949, specifying the conditions which it considered to be necessary as a guide to the evaluation of coach proposals at approximately a 4 cent fare level:

- (a) Conduct operations over heavy-traffic routes.
- (b) Use high-density equipment (equipment having more than the average number of seats for that type of aircraft).
- (c) Schedule service so as to minimize traffic diversion from regular flights.

¹ Winter 1950, Vol. 17, No. 1, and Autumn 1950, Vol. 17, No. 4.

- (d) Cut out all non-essential service to passengers such as meals, extra stewardesses, full reservation procedures, etc.

About the same time the Board decided that air coach service could not be conducted successfully with DC-3 aircraft due to the extremely high load factor necessary to cover operating costs at a 4 cent fare. Proposals of Capital for 50-seat service and National for 46-seat coach service in DC-4s were disapproved because of failure to specify high-density equipment. In this connection it may be noted that most DC-4 air coach services approved by the Board to date have had seating arrangements ranging from 55 to 73 seats.

A distinctly new "wrinkle" then entered the air coach "experiment" when American Air Lines proposed to operate daytime 70-seat high-density DC-6 air coach service as compared with 52-seat standard service. The economic argument was that coach fares on a base rate of 4.47 cents per passenger mile with 70 seats would give the same plane-mile revenue, assuming equal load factors as the standard rate of 6 cents per mile with 52 seats. The Board decided to approve this operation and subsequently approved a similar arrangement for TWA using high-density Constellations.

Thus Member Jones of the Civil Aeronautics Board and his assistant, Mr. Davis, outlined the history of the Board's "Coach Policy" to January 1950. The fears of the Board at the time were expressed by Messrs. Jones and Davis as follows:

"Nothing could be more damaging to the financial welfare of industry than indiscriminate extensions of coach operations without regard to their effect on the financial position of the industry . . . if not carefully controlled, coach operations might lead to a costly price war which could destroy the financial soundness of the entire domestic air transport system."²

It is clear from the above that the Board has assumed a paternalistic point of view with respect to its "charges" in the air transportation industry. The historical objective of Government regulation to protect the public has given way to an emphatic policy of protecting the air carriers from each other and from their own errors. This is distinctly a far cry from the conception of the Federal Government's functions expressed by President Thomas Jefferson in his inaugural address in the year 1801: "... a wise and frugal government which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement. . . ."

The Role of Competition in Air Transportation

Perhaps the most serious objection to broadening the scope of government beyond the Jeffersonian concept into present day government paternalism as embodied in the Board's "Air Coach Policy" is that normal economic competition fails to operate. Unless airline

² 17 J. Air L. and C., p. 12.

management is left relatively free to design and price a variety of services in accord with its own judgment and stand by the consequences, our air transportation development will lack one of the greatest incentives for continuous improvement of service and reduction of rates.

One observer cites six functions of competition in transportation:*

- (1) Bring about the lowest possible rates.
- (2) Promote maximum service consistent with the rate charged.
- (3) Provide a rate that will permit a remunerative return on the bulk of the capital invested.
- (4) Eliminate the inefficient transport operator.
- (5) Eliminate excessive or unused transportation facilities.
- (6) Encourage the creation of facilities where needed.

The Congress has set a broad policy of competition to the extent necessary to assure the sound development of an air transportation system. Reasonable competition has been fostered in the conviction that it is necessary in order to secure the optimum development of air transportation service. Competition must be constructive in character and must not result in lowering the safety factor or in precluding co-operative arrangements which may result in efficiency and economy. (Air Coordinating Committee, statement, Aug. 1, 1947.)

The Civil Aeronautics Act prohibits air carriers from engaging in *unfair competition* with each other and from using unfair or deceptive practices. Since the complaint of Eastern Air Lines refers to unfair competition in the UAL-CAB coach controversy, it may be of interest to examine the nature of unfair or deceptive competitive practices which have been condemned by the Federal Trade Commission in the course of hundreds of cases involving unfair trade practices. A number of specific types of such practices were enumerated in the 1939 Annual Report of the Federal Trade Commission (pp. 82-89). Prominent among some thirty types of unfair competitive practices were the following:

- (1) Use of false and misleading advertising.
- (2) Misbranding.
- (3) Misappropriation or simulation of well-known trade-names, labels or packaging.
- (4) Selling second-hand products as new.
- (5) Bribing buyers and employees of customers to secure patronage.
- (6) Making false and disparaging statements respecting competitors' products and business.
- (7) Combinations or agreements of competitors to enhance or maintain prices, or divide territory, or cut off competitors' source of supply, or otherwise restrain free and fair competition.

In the light of the foregoing, United Air Line's proposal for reduction of seat density in its DC-4 air coach planes hardly seems to constitute an unfair competitive practice.

* Waters, R.H., *Competition in Transportation*, (1938) p. 28.

In its petition to reduce its DC-4 coach seating arrangement to a pattern of 4-abreast seating with 58 passengers, United Air Lines presented cost data showing that on an incremental cost basis, using figures for the first nine months of 1952, a load factor of only 24.8 percent would be needed to break even at current coach fares. On a fully-allocated cost basis United estimates that a 61.4 percent load factor would be needed, or on a 58-seat plane a minimum of 35 passengers would cover fully-allocated costs. To sum up its economic argument, United pointed out that it had carried an average of more than 35 passengers per flight on its coach service during the past year. Hence, argues the carrier, there is every basis for believing that the 58-seat coach plane would be profitable. Furthermore, in its denial *the Board made no contention that United's reduced seating plan would be non-compensatory.*

It seems to the writer that perhaps the Board's "Coach Policy" should be liberalized to the extent of permitting variations both in the price and detailed specifications of air coach service. Perhaps it may be desirable to have several variations in coach-class traffic where the rate would vary with the nature of the equipment and service offered, characteristics of the route served, time of the flight, and other factors. Perhaps the present "target rate" of 4 cents per passenger mile for air coach is too specific, for to make such a price policy effective it seems to be necessary for the Board to prescribe detailed specifications for the service itself and thus more and more of the normal prerogatives of private business management must be taken over by the regulatory agency.

Yet, while standard airline fares have been made fairly uniform, it is noted that there is considerable variation in "regular service" seating arrangements. For instance, at the present time Eastern Air Lines' Super Constellation at regular fares carries 88 seats, while American Air Lines' Super Constellations at regular fares carries only 64 seats (plus 7 lounge seats which are not sold). With the smaller Constellation at regular fares Eastern provides 60 seats, American 57 seats, and Capital 55 seats. Using the DC-6, United provides 50 seats plus six lounge seats which are not sold, while American provides 52 seats. On the other hand, on the DC-6B, which is four feet longer, United provides 58 seats plus six lounge seats not sold, while American provides only 52 seats. Perhaps the widest variation in regular service seating arrangements is found in the case of the DC-4 where according to a compilation published in *American Aviation* April 28, 1952, DC-4s were operated as follows: United and PAA (Latin American Division) 44, Panagra 46, Delta 48, Northwest, National and California Central 50, Colonial 52, Eastern 60, and U.S. Overseas 65.

Very clearly from the above facts, which are admittedly only a sample, there is no uniformity in the seating arrangements provided under regular airline fares. Is there any more reason why air coach seating arrangements should be held to a uniform pattern?